

## **PART I**

# **POLICY IMPLEMENTATION**

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## Chapter 1—General Provisions

### A. General

This Part sets forth the principles and procedures for managing the Government's acquisition of recurring commercial support activities, implementing the "Federal Activities Inventory Reform Act of 1998" ("The FAIR Act"), P.L. 105-270, and Circular A-76. Exhibit 1 summarizes the conditions that permit conversion to or from in-house, contract or Inter-Service Support Agreement (ISSA) performance. The requirements of the FAIR Act apply to the following executive agencies: (1) an executive department named in 5 USC 101, (2) a military department named in 5 USC 102, and (3) an independent establishment as defined in 5 USC 104. The requirements of the FAIR Act do not apply to: (1) the General Accounting Office, (2) a Government corporation or a Government controlled corporation as defined in 5 USC 103, (3) a non-appropriated funds instrumentality if all of its employees are referred to in 5 USC 2105(c), or (4) Depot-level maintenance and repair of the Department of Defense as defined in 10 USC 2460.

### B. Inherently Governmental Activities

1. Inherently Governmental activities are not subject to the FAIR Act, Circular A-76 or this Supplemental Handbook. As a matter of policy, an inherently Governmental activity is one that is so intimately related to the exercise of the public interest as to mandate performance by Federal employees. The Office of Federal Procurement Policy (OFPP) Policy Letter 92-1, dated September 23, 1992 (*Federal Register*, September 30, 1992, page 45096), provides guidance on the identification of inherently Governmental activities (see Appendix 5). This guidance conforms to the definition provided at Section 5, paragraph 2, of the FAIR Act.

2. The decision that a particular function is inherently governmental or commercial rests on a number of factors, including: the level of Federal control required, the ministerial nature of the function, certain statutory provisions, and distinguishing between recurring operations and oversight. Statutory authority to perform a function is not, itself, sufficient to warrant continued in-house performance as an inherently governmental function. The full range of issues addressed by the OFPP Policy Letter 92-1 must be considered. As provided by the Policy Letter, OMB remains available to resolve agency concerns in this determination.

### C. Government Performance of Commercial Activities

Consistent with paragraph 8. of the Circular, cost comparisons are not required to convert the following activities to or from in-house, contract or ISSA (The application of these conditions should be reviewed by the official in paragraph 9.a. of the Circular, or designee, as a part of the annual inventory of commercial activities.):

1. *National Defense or Intelligence Security.*—Commercial activities may be performed by in-house, contract or ISSA, without cost comparison, when required to assure the national defense or national intelligence security. The Secretary of Defense, or designee, approves requests for conversions on the basis of the national defense. The Director of Central Intelligence, or designee, approves conversions on the basis of national security.

2. *Patient Care.*—As provided by paragraph 8.c. of the Circular, commercial activities at Government-owned hospitals or other health facilities may be performed by in-house, contract or ISSA, without cost comparison, when needed to maintain the quality of direct patient care.

3. *Core Capability.*—A minimum core capability of specialized, scientific or technical in-house or contract employees and related commercial workload, may be maintained, without cost comparison, to ensure that the Government has the necessary capabilities to fulfill its mission responsibilities or meet emergency requirements.

4. *Research and Development.*—As provided by paragraph 7.c.(7) of the Circular, research and development activities may be performed by in-house, contract or ISSA without cost comparison. Recurring and severable activities that are performed in support of direct research and development are subject to the cost comparison requirements of this Supplement.

5. *No Satisfactory Commercial Source Available.*—

a. If a commercial activity could be contracted, but there is no commercial source, the activity is to be operated using the Government's Most Efficient Organization (MEO).

b. Efforts to solicit commercial interest are to be documented, to include: (1) consideration of preferential and non-preferential procurement and (2) a determination that the solicitation did not limit commercial participation.

6. *Functions With 10 or Fewer FTE.*—Activities involving 10 or fewer FTE may be converted from contract

to in-house or ISSA, without cost comparison, if the contracting officer determines that performance is unsatisfactory or that fair and reasonable prices cannot be otherwise obtained.

**7. Meet Performance Standard.—**

a. Performance by in-house, contract or ISSA may be authorized if an agency demonstrates that performance meets or exceeds generally recognized industry performance and cost standards.

b. Competitions based upon output and cost performance measures must reflect the agency's fully allocated costs of performance and must be certified as being in full compliance with the Statement of Federal Accounting Standards No.4, "*Managerial Cost Accounting Standards for the Federal Government*." The cost comparability procedures described in this Supplement, such as those related to fringe benefit factors, must also be considered in assessing the comparability of Government and private sector performance measures and costs. Adjustments to Government and private sector performance measures and costs may be required. Performance standards should be monitored in conjunction with the Chief Financial Officers Act (CFO Act) and the Government Performance Results Act of 1993 (GPRA).

c. A full description of the standards, performance measures, costs and adjustments made will be developed by the agency and made available to the public upon request. The use of selected standards, performance measures and adjustments are subject to the administrative appeal procedures provided at Part I, Chapter 3, paragraph K, of this Supplement.

**8. Lower Cost.—**In-house, contract or ISSA performance of a commercial activity may be warranted by the results of a cost comparison conducted in accordance with the procedures described in this Supplement.

**9. Temporary Authorizations for In-House Performance.—**If a contractor defaults or is otherwise terminated, agencies should seek interim contract support. If interim contract performance is not feasible, in-house or ISSA performance of a "contracted" activity may be authorized, on a temporary and emergency basis. As soon as possible, but not later than at the end of the next contract option period, a replacement contract should be awarded or a new requirements cost comparison completed to justify permanent conversion to in-house performance.

**D. Contract Performance of Commercial Activities**

As a matter of policy, the Government shall acquire non-recurring commercial activities through contracts with the private sector. The acquisition of a recurring

commercial activity by contract may be warranted under the following conditions (The application of these conditions should be reviewed by the official in paragraph 9.a. of the Circular, or designee.):

**1. Contracted Activities.—**An activity obtained through a competitively awarded contract will continue to be obtained by contract as long as the quality of service is acceptable and competitive prices are fair and reasonable. If the Government believes that quality is unacceptable or prices appear unreasonable, a cost comparison is conducted to justify conversion to in-house or ISSA performance.

**2. New Requirements.—**A new requirement will be obtained by a competitively awarded contract. If there is reason to believe that contract service quality or prices may be unreasonable, a cost comparison is conducted to justify conversion to in-house or ISSA performance.

**3. Severable Expansions.—**Severable expansions of existing in-house, contracted or ISSA performed activities are obtained by a competitively awarded contract. If the expansion is not severable, a review of the entire activity, including the proposed expansion, is conducted for potential contract performance. If there is reason to believe that contract service quality or prices may be unreasonable, a cost comparison is conducted to justify conversion to in-house or ISSA performance.

**4. Interservice Support Agreements (ISSA).—**

a. Commercial activities may be performed by in-house or contract resources or through ISSAs as provided by law and Part I, Chapter 2 of this Supplement.

b. In responding to interservice support requests, potential agency service providers will certify that their reimbursable cost estimates reflect the full competitive costs to the Government as defined in this Supplement.

**5. Activities With 10 or Fewer FTE.—**Commercial activities involving 10 or fewer FTE may be performed by in-house, contract or ISSA performance, without cost comparison, if the contracting officer determines that offerors will provide required levels of service quality at fair and reasonable prices.

**6. Activities of 11 or More FTE.—**Commercial activities may be converted to contract or ISSA, without cost comparison, if fair and reasonable prices can be obtained through competitive award and all directly affected Federal employees serving on permanent appointments are reassigned to other comparable Federal positions for which they are qualified. In no case, shall any commercial activity be modified,

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reorganized, divided or in any way changed for the purpose of circumventing the requirements of this paragraph or this Supplement.

*7. Activities Performed by the Military.—*

a. The official in paragraph 9.a. of the Circular, or designee, may authorize the direct conversion of activities performed by uniformed military service personnel to contract performance, without cost comparison, if the contracting officer determines that fair and reasonable prices can be obtained from qualified commercial sources.

b. If a cost comparison is conducted or otherwise required to convert to ISSA performance, the uniformed military positions included in the Government's in-house cost estimate are cost at the standard composite rate for uniformed personnel published by the DOD or other applicable agency Comptroller. The Comptroller will also establish the number of productive hours for uniformed personnel (see Part II, Chapter 2, paragraph B, "Personnel").

c. Civilian personnel will be cost as provided by this Supplement. While the uniformed positions may or may not be converted to civilian positions as a part of this process, the conversion of in-house civilian positions to uniformed positions is not authorized.

*8. Preferential Procurement Programs.—*A commercial activity of any size that is performed by Federal employees may be converted to contract performance, without cost comparison—even if it results in adverse employee actions, if the contract is awarded to a preferential procurement source at a fair market price. At the agency's discretion, a cost comparison may be conducted.

*9. Lower Cost.—*Contract or ISSA performance of a recurring commercial activity may be authorized by the results of a cost comparison conducted in accordance with the procedures described in this Supplement.

#### **E. Agency Cost Comparison Waivers**

1. The official in paragraph 9.a. of the Circular may authorize cost comparison waivers and direct conversions to or from in-house, contract or ISSA performance. ISSA cost comparison waivers may be granted by the requesting agency only.

2. Within the Department of Defense, the authority to issue general cost comparison waivers may be delegated to the Service Assistant Secretary or Departmental Agency Head, without further delegation.

3. Waivers shall be granted only as follows:

a. A written cost comparison waiver will be prepared and signed by the authorized waiver official.

The waiver will be accompanied by a detailed determination that the conversion meets the following requirements:

(1) The conversion will result in a significant financial or service quality improvement and a finding that the conversion will not serve to reduce significantly the level or quality of competition in the future award or performance of work; or

(2) The waiver will establish why in-house or contract offers have no reasonable expectation of winning a competition conducted under the cost comparison procedures of this Supplement.

4. These general-function A-76 cost comparison waivers are subject to the administrative appeal procedures provided at Part I, Chapter 3, paragraph K, of this Supplement. While the justification for a waiver is subject to appeal, a decision not to issue a waiver is not subject to appeal.

5. Federal employees adversely affected by a decision to waive a cost comparison shall be afforded the same personnel considerations provided at Paragraph H of this Chapter.

6. Cost comparison waivers are granted to Department of Defense and other Federal installations scheduled for closure or in cases where functions are designated for termination on specified dates.

#### **F. Commercial Activities Inventory**

As required by the FAIR Act, Circular A-76 and this Supplemental Handbook, each agency will maintain a detailed inventory of all in-house commercial activities performed by its Government employees. This inventory, as described at Appendix 2 of this Supplement, and any supplemental information requested by OMB, will be submitted not later than June 30 of each year. Agencies should, as appropriate, permit employee involvement in the development of this Commercial Activities Inventory.

#### **G. Review of Documents**

*1. Access to Supporting Documentation.—*

a. At the earliest possible stages of development, consistent with procurement and conflict of interest requirements, affected parties will have the opportunity to fully participate in the development of supporting documents and proposals, including the development of performance standards, performance work statements, management plans, and the development of in-house and contract cost estimates.

b. Upon issuance, a solicitation used in the conduct of a cost comparison will be made available to directly affected Federal employees or their representatives for comment. The employees or their represent-

atives will be given sufficient time to review the document and submit comments before final receipt of offers from the private sector. Private sector offerors shall comment as provided by the Federal Acquisition Regulations (FAR).

2. *Appeals of Agency Decisions.*—As provided by the Circular and this Supplement at Part I, Chapter 3, paragraph K, agencies shall make all relevant documents available for review as a part of the administrative appeal process. The detailed documentation shall include, at a minimum, the in-house cost estimate, with detailed supporting data, the completed cost comparison form itself, and the management plan.

#### H. Personnel Considerations

1. Adversely affected Federal employees are employees identified for release from their competitive level by an agency, in accordance with 5 CFR Part 351 and Chapter 35 of Title 5, United States Code, as a direct result of a decision to convert to contract, ISSA performance or the agency's Most Efficient Organization (MEO).

2. Federal employees and existing Federal support contract employees adversely affected by a decision to convert to contract or ISSA performance have the Right-of-First-Refusal for jobs for which they are qualified that are created by the award of the conversion.

a. A standard clause is included in direct conversion and A-76 cost comparison solicitations notifying potential contractors of this requirement (see FAR 52.207-3). The Right-of-First-Refusal is afforded to all Federal employees adversely affected by the decision to convert to contract performance.

b. Executive Order 12933, "Non-Displacement of Qualified Workers Under Certain Contracts," dated October 20, 1994, also provides the Right-of-First-Refusal to contract employees (see FAR 7.305 (c)). As a matter of policy, the Right-of-First-Refusal offered at FAR 52.207-3 is superior.

c. Personnel officers should work with the contracting officer and employees to implement these provisions.

3. Agencies should exert maximum efforts to find available positions for Federal employees adversely affected by conversion decisions, including:

a. giving priority consideration for available positions within the agency;

b. establishing a reemployment priority list and an effective placement program;

c. paying reasonable costs for training and relocation that contribute directly to placement, and

d. coordinating with the Office of Personnel Management (OPM) to ensure employees have access to placement programs, including the OPM-operated Displaced Employee Program (DEP) and the Inter-agency Placement Assistance Program (IPAP).

4. Agencies should notify employees affected as soon as possible of an impending cost comparison and keep them informed of its progress at every major milestone of the process.

#### I. Relationship to the Budget

1. Workload and resulting cost estimates will be consistent with the President's Budget covering the performance period. New or expanded work requirements, ISSAs and conversions of existing work to or from in-house or contract performance should be identified.

2. Agencies should include in each annual budget submission the savings from changes in the method of obtaining commercial activities. These savings will be submitted in accordance with the instructions of OMB Circular No. A-11, "*Preparation and Submission of Budget Estimates*." Changes in the method of performance should be timed to conform with the budget process.

3. Agencies may request OMB approval to retain or redistribute budget savings to other critical missions.

## EXHIBIT 1

### CONDITIONS PERMITTING GOVERNMENT PERFORMANCE OF COMMERCIAL ACTIVITIES

1. **National Defense or Intelligence Security.** The Secretary of Defense, or designee, approves national defense justifications. The Director of Central Intelligence, or designee, approves national security justifications.
2. **Patient Care.** Commercial activities at Government-owned hospitals or other health facilities may be performed by in-house, ISSA or contract employees when needed to maintain the quality of direct patient care.
3. **Core Capability.** A core capability of in-house and contract resources may be warranted for certain functional areas.
4. **Research and Development.** Research and development activities may be converted to or from in-house, contract or ISSA without cost comparison. Severable support activities are subject to the cost comparison provisions of this Supplement.
5. **No Satisfactory Commercial Source Available.** Agencies will solicit private sector interest and certify that the solicitation did not restrict or otherwise limit competition.
6. **Functions With 10 or Fewer FTE.** May be converted to or from in-house, contract or ISSA, without a cost comparison, if the contracting officer determines that reasonable prices cannot otherwise be obtained.
7. **Meet Performance Standard.** Agencies may demonstrate that the activity meets or exceeds generally recognized industry cost and performance standards, after all adjustments required by this Supplement.
8. **Lower Cost.** Results of a cost comparison demonstrate that in-house performance is less costly.
9. **Temporary Authorization.** Temporary emergency performance may be warranted not to exceed the next full contract option year.

### CONDITIONS PERMITTING CONTRACT PERFORMANCE OF COMMERCIAL ACTIVITIES

1. **Contracted Activities.** Should be obtained by contract, unless a cost comparison demonstrates that in-house or ISSA performance is more cost effective.
2. **New Requirement.** Should be obtained by contract, unless contract quality or price appear unreasonable. A cost comparison is performed to convert the activity to in-house or ISSA performance.
3. **Severable Expansions.** Same as above.
4. **ISSAs.** Commercial activities should not be performed through new or expanded ISSAs, except as provided by law or this Supplement.
5. **Activities With 10 or Fewer FTE.** May be converted to or from in-house, contract or ISSA, without a cost comparison.
6. **Activities with 11 or More FTE.** May be converted to contract or ISSA, without cost comparison, if fair and reasonable contract prices can be obtained by competitive award *and* all directly affected Federal employees on permanent appointments can be reassigned to other comparable Federal positions.
7. **Activities Performed by the Military.** Activities performed by military (uniformed) personnel may be converted to contract without cost comparison. Military positions included in cost comparisons are cost at the composite rates provided by the DOD or other appropriate agency Comptroller.
8. **Preferential Procurement Programs.** Contract performance may be granted, without cost comparison, if the contract is awarded to a preferential procurement program.
9. **Lower Cost.** Conversion to contract is required if a cost comparison indicates that contract performance is the lower cost alternative.

## Chapter 2—Interservice Support Agreements (ISSA)

### A. General

1. In accordance with the provisions of the Federal Property and Administrative Services Act of 1949, the Economy Act of 1932 (31 USC 1535), and the Government Management Reform Act of 1994 (103 USC 356), excess property and common administrative services available from other Federal departments or agencies may be used, *unless* the needed product or service can be obtained more economically through agency or private sector resources. The cost principles and competition procedures established by this Supplement are to be used to determine when services should be performed by in-house, contract or interservice support agreement (ISSA) resources.

2. Federal agencies shall not provide commercial activities to the private sector. OMB approval or specific statutory authority is required to deviate from this policy.

3. In accordance with OMB Circular A-97, *“Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government,”* Federal agencies must conduct cost comparisons prior to offering to provide or receive commercial services to or from State or local government agencies. This requirement does not, however, apply to exceptional emergency circumstances such as disaster relief requirements.

4. In accordance with OMB Circular A-126, *“Improving the Management and Use of Government Aircraft,”* dated May 22, 1992, agencies will conduct approved cost comparisons before retaining, purchasing or otherwise providing, directly or through ISSAs, Federal aircraft or aviation services (see Appendix 6).

5. In recognition of Government-wide downsizing and reinvention efforts, the cost comparison requirements of this Supplemental Handbook shall not apply to any ISSA consolidations, where the transfer of work is accomplished prior to October 1, 1997, unless that consolidation includes the conversion of work to or from contract performance and such conversion is not otherwise authorized by this Supplemental Handbook.

a. Effective October 1, 1997, the cost comparison requirements of this Supplemental Handbook will not apply to existing or renewed ISSAs or to the consolidation of commercial or other services within a Department or agency, unless that consolidation includes the conversion of work to or from in-house or contract performance. New, expanded or transferred work requirements will be authorized for per-

formance by an ISSA only as provided by the cost comparison or other provisions of this Supplemental Handbook.

6. The cost comparison provisions of this Chapter do not apply to the performance of inherently governmental functions, such as reimbursable procurement or contract administration services.

### B. Specific

1. The prospective providing agency will furnish the requesting agency a firm price or reimbursable rate for the requested new or expanded product or service. The prospective provider will also issue a certification that its price or reimbursable rate is calculated in accordance with Part II of this Supplement. This cost estimate will then be compared by the requesting agency to an in-house and/or a commercial offer, also calculated or adjusted in accordance with this Supplement. A contract shall be awarded by the requesting agency, if the commercial offer is more economical.

a. If the prospective provider is responding to a formal solicitation issued by the requesting agency, the prospective provider shall submit to the requesting agency a synopsis, management plan and Government cost estimate developed in accordance with this Supplement. A complete response, as required by the Federal Acquisition Regulations (FAR), is not required.

(1) Under no condition, shall the requesting agency cancel or otherwise delay bid opening or contract award in order to permit an agency to submit an ISSA price or reimbursable rate.

(2) The requesting agency may accept or reject the prospective provider's offer as technically qualified or unqualified as it deems appropriate and without appeal. Prospective providers who submit a technically acceptable offer shall compete with private sector and other in-house offers.

b. Agencies that wish to provide a commercial activity to another Department or agency may petition the agency to conduct a cost comparison.

c. At the sole discretion of the requesting agency, the prospective provider may submit performance standard data, as provided by Chapter 1, paragraph C.7. of this Part. The prospective provider shall certify that all necessary adjustments to its performance measures and cost standards have been made. The requesting agency shall review the documentation for these adjustments and make similar adjustments to

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the private and other in-house offers based upon the submission of performance measures.

2. Competitions between a requesting agency, private sector offeror and a potential ISSA provider may require special performance and price adjustments to ensure that all competitors are treated equitably. These performance and price adjustments, include:

- Contract Price
- Contract Administration Costs
- Additional Costs
- One-time Conversion Costs
- Gain/Loss on Disposal/Transfer of Assets
- Federal Income Taxes
- Other Adjustment Costs
- Minimum Differential Costs

3. Proposals to obtain new or expanded products or services from another Government agency or private sector offeror, including ISSA proposals, will be published in the *Commerce Business Daily*.

4. An agency that is currently obtaining a commercial support service from another Department or agency may, with proper notification, terminate that relationship and convert directly to contract performance without cost comparison. If, however, the agency wishes to perform that work directly with in-house resources, it will need to justify that decision through a cost comparison for a “new requirement.” Again, this provision does not apply to the performance of inherently governmental activities.

5. Agencies will not retain, create or expand capacity for the purpose of providing new or expanded

levels of interservice support services, unless justified by the cost comparison requirements of this Supplement.

a. Once an interservice support provider has competed its entire interservice support workload with the private sector, that provider may provide new or expanded interservice support work—of the same type—to other agencies, without further review or cost comparison on its or the requesting agency’s part. This ability to offer services, without cost comparison, will continue until the providing agency has increased its capability and total workload by the lesser of (1) the expansion requirements of this Supplement or (2) more than 65 FTE are added to the in-house capability, at which time another full review or individual cost comparisons are required.

b. Paragraph 5.a. notwithstanding, if a new or expanded ISSA results in a general conversion of work to or from in-house or contract performance and a cost comparison has not previously justified the provider’s method of performance, a cost comparison is required.

6. Cost comparisons conducted to justify ISSAs are subject to independent review and appeal. Prior to bid opening, the requesting agency’s Independent Review Officer shall review all Government bids for compliance with the requirements of this Supplement. Appeals shall be conducted in accordance with Chapter 3, paragraph K, of this Part.

## Chapter 3—Cost Comparisons

### A. General

1. Except as provided in Chapter 1 of this Part, agencies will conduct cost comparisons when activities do not meet established performance standards, when agencies believe fair and reasonable prices cannot be obtained from qualified commercial sources, or as otherwise provided to permit the conversion of work to or from in-house, contract or interservice support agreement (ISSA) performance. Detailed guidance on the conduct of cost comparisons is contained in Part II of this Supplement.

2. In consolidating activities for cost comparison, agencies should take existing industry structures, contract administration and other management considerations into account.

3. In general, the cost comparison process consists of six major components. They are: (1) the development of a Performance Work Statement (PWS) and Quality Assurance Surveillance Plan (QASP); (2) the performance of a management study to determine the Government's Most Efficient Organization (MEO); (3) the development of an in-house Government cost estimate; (4) issuance of the Request for Proposal (RFP) or Invitation for Bid (IFB); (5) the comparison of the in-house bid against a proposed contract or ISSA price, and (6) the Administrative Appeal Process, which is designed to assure that all costs entered on the Cost Comparison Form (CCF) are fair, accurate and calculated in accordance with Part II of this Supplement.

4. Cost comparisons should be completed within eighteen months for a single activity (or thirty-six months for multiple activities) from the cost comparison start date, i.e., public or union notification and designation of the study team. Agencies are to provide an annual report to OMB on all cost comparisons that exceed these time frames, including a description of the problems encountered, remedial actions, status and expected completion date.

### B. The Cost Comparison Study Team

1. Generally, a central or field agency study team should be formed. Over time, the team may include individuals with expertise in management analysis, position classification, work measurement, value engineering (see OMB Circular A-131), industrial engineering, cost analysis, procurement and the technical aspects of the activity under study. The team should document mission requirements and seek new and

innovative ways to provide the required products or services.

2. Agencies are encouraged to seek training on the policies and procedures of Circular A-76 and this Supplement, and to ensure that the skills necessary to prepare the Performance Work Statement, in-house management plan and cost estimate are available. Joint training for employees and their representatives is encouraged.

3. Procurement restrictions prohibit Federal procurement officials from subsequently working for a contractor on a procurement in which the procurement official was involved. "Procurement official" in this sense includes personnel in the commercial activity who are directly and substantially involved in preparing or approving the PWS, management plan, the in-house cost estimate, or supporting the source selection evaluation process. (See FAR 3.104-4(h)(3) and 41 USC 423.)

a. Employees who participate or provide data to support the development of the various study elements, but do not review, approve or have direct knowledge of the final performance work statement, performance standards, MEO, in-house or contract cost estimates are not considered "procurement officials" and are not affected by this restriction.

b. The participation of functional experts is essential to the quality of the cost comparison. However, when participation on the study team could adversely affect their rights under the Right-of-First-Refusal or the opportunity for future employment with the contractor, employees should be given the option to decline participation.

c. At a minimum, certifying officials for the PWS and Management Plan, the Independent Review Officer(s), those who sign the cost comparison form and the Administrative Appeal Authority are considered procurement officials.

### C. Performance Work Statements

1. Performance Work Statements (PWS) should be developed for all activities being resolicited for contract or scheduled for direct conversion to or from in-house, contract or ISSA performance.

2. The PWS defines what is being requested, the performance standards and measures, and timeframes required. It provides the technical performance sections of the Request for Proposals (RFP) or Invitation for Bid (IFB) issued by the contracting officer.

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3. In the development of the PWS, agencies should refer to the Office of Federal Procurement Policy's (OFPP) Policy Letter 91-2, "Service Contracting," dated April 9, 1991; OFPP Policy Letter 93-1, "Management Oversight of Service Contracting," dated May 18, 1994, and the OFPP Best Practices Guide to Performance-Based Service Contracting.

4. Special care should be taken when developing the PWS to ensure that it does not limit service options, arbitrarily increase risk, reduce competition, unnecessarily violate industry service or service grouping norms or omit statutory or regulatory requirements without full justification. The PWS should be performance-oriented, specifying what outputs or measures are desired and limiting directions as to how the results are achieved. Agencies should not consider a PWS that limits the options available for providing the required product or service, or otherwise unnecessarily restricts private sector participation as being in compliance with Circular A-76 or this Supplement.

#### **D. Quality Assurance Surveillance Plans**

1. The Quality Assurance Surveillance Plan (QASP) describes the methods of inspection to be used, the reports required and the resources to be employed with estimated work-hours. Although the QASP accompanies the PWS to the Independent Review Officer (IRO) for a cost comparison, it need not be included as a part of the solicitation or provided to private sector offerors. In-house, contract and ISSA offerors should develop their offers based upon the requirements of the PWS alone. The QASP process is supplemented with periodic Post-MEO Performance Reviews.

#### **E. Management Plans**

1. The Management Plan describes the Government's Most Efficient Organization (MEO) and is the basis of the Government's in-house cost estimates. The Management Plan, which must reflect the scope of the Performance Work Statement, should identify the organizational structures, staffing and operating procedures, equipment, transition and inspection plans necessary to ensure that the in-house activity is performed in an efficient and cost effective manner.

2. Agencies may consider existing management reinvention, consolidation, re-engineering, personnel classification, market and other analyses in the identification and development of the MEO.

3. The Management Plan is certified as reflecting the Government's Most Efficient Organization

(MEO). The certifying official may be any technically competent individual: (a) organizationally independent of the function under study or (b) at least two levels above the most senior official included in the in-house cost estimate. The certifying official must also be able to commit to the provision of necessary resources to perform the activity. Such certification is made before the review of bids or proposals.

4. The Management Plan will document the assumptions used in the development of the MEO and in-house cost estimate, including:

a. *Summary.* An overall comparison of the current organization with the MEO and a review of any special initiatives or assumptions, including equipment or productivity changes.

b. *The Quality Assurance Surveillance Plan (QASP).* A description of the Government's in-house Quality Assurance Surveillance Plan and how it will differ, including resources, if services are provided by ISSA or contract, and why.

c. *Assets.* When existing assets used by the Government's MEO are not provided to the ISSA or contractor for use, an analysis of the benefits to the Government may be warranted.

d. *Transition Plan.* A plan for the transition to or from current organizational structure to MEO, contract or ISSA performance—designed to minimize disruption, adverse impacts, capitalization and start-up requirements.

e. *In-house Cost Estimate.* A description of all costs associated with the performance of the MEO, calculated in accordance with Part II of this Supplement.

#### **F. Safeguarding the MEO**

1. The Management Plan and the MEO are considered procurement sensitive documents until a tentative decision is reached, e.g., at bid opening and completion of the cost comparison form.

2. The Management Plan, MEO and in-house cost estimate are delivered as sealed documents to the contracting officer prior to the due date for the receipt of bids or technical proposals. The period available to deliver contract offers will be extended until the MEO and the in-house cost estimates are sealed. No private sector offer is opened or otherwise reviewed prior to the sealing of the Government's in-house cost estimate.

#### **G. Solicitations**

1. The contracting officer reviews the PWS to ensure that it is adequate and appropriate to serve as

a basis for award. The Contracting Officer issues a solicitation based on the PWS.

2. The contracting officer, when contracting by sealed bid, inserts in cost comparison solicitations the provision at FAR 52.207-1, Notice of Cost Comparison (Sealed Bid).

3. The contracting officer, when contracting by competitive negotiation or source selection, inserts in cost comparison solicitations the provision at FAR 52.207-2, Notice of Cost Comparison (Negotiated).

4. The contracting officer inserts the clauses at FAR 52.207-3 and 7.305, the Right-of-First-Refusal of Employment, in all direct conversion and cost comparison solicitations.

#### **H. Methods of Procurement**

1. All competitive methods of Federal procurement provided by the FAR are appropriate for cost comparison under the Circular and this Supplement. This includes: sealed bid, two-step, source selection and other competitive qualifications-based or negotiated procurement techniques.

2. In selecting the method of procurement and contract type, the contracting officer analyzes the PWS and applies the guidance contained in OFPP Policy Letter 91-2 and FAR Part 16.

3. Source Selection or negotiated procurement techniques may be used for some A-76 Cost Comparisons. To ensure equity in the cost comparison process, the following guidelines are provided:

a. In addition to the PWS, Management Plan and in-house cost estimate, the Government, like the private sector offerors, shall submit the Technical Performance Plan required by the solicitation to the A-76 Independent Review Officer (IRO). The Technical Performance Plan reflects the MEO and is sealed prior to the consideration of any part of any contract offer.

b. As required by the FAR, the Government should establish a Source Selection Authority, including assurances that there are no potential conflicts of interest in the membership of the Authority.

c. The Authority reviews contract and ISSA offers and identifies that offer which represents the “best overall value to the Government.” This contract offer competes with the Government’s in-house cost estimate.

d. With the selection of the competitive offer, the contracting officer submits to the Authority the Government’s in-house Management Plan, which must comply with the technical proposal requirements of the solicitation. The Authority evaluates the in-house offer and assesses whether or not the same level of

performance and performance quality will be achieved. The Authority should not review or have access to the in-house cost estimate.

e. The Government makes all changes necessary to meet the performance standards accepted by the Authority. Revised cost estimates are resubmitted to the IRO for acceptance. This will assure that the Government’s in-house cost estimate is based upon the same scope of work and performance levels as the best value contract offer.

#### **I. The Independent Review**

1. The Government’s cost estimates are certified in writing by the agency’s A-76 Independent Review Officer (IRO), or designee, as being in full compliance with the procedures and requirements described in this Supplement. The IRO should be a qualified person from an impartial activity that is organizationally independent of the commercial activity being studied and the activity preparing the cost comparison.

2. The PWS, Management Plan, QASP and all Government developed cost estimates, with supporting documentation, are forwarded to the agency IRO, or designee, for review. This is done prior to submission of the Cost Comparison Form (CCF) and supporting data to the contracting officer.

3. The IRO acts as an independent authority to:

a. ensure that the data contained in the Management Plan reasonably establish the Government’s ability to perform the PWS within the resources provided by the MEO, and

b. ensure that all costs entered on the CCF are fully justified and calculated in accordance with the procedures described in Part II of this Supplement.

#### **J. Evaluation of Bids and Tentative Decisions**

1. For sealed bid procurements, the contracting officer opens the bids, including the Government’s in-house cost estimate, and enters the price of the apparent low offeror on the Cost Comparison Form (CCF). After all necessary adjustments are made and the CCF is completed, the contracting officer announces the tentative decision, subject to evaluation of bids for responsiveness, responsibility and resolution of possible administrative appeals. The appeal period begins when access to the completed CCF, and all supporting documentation, is provided to affected parties for review, usually the day of bid opening.

2. If, as a result of an appeal or other problem, the selected competitive offeror is other than the previously announced apparent low bidder, the CCF

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is revised. All affected parties should be notified of any such revision.

3. For a negotiated or best value procurement, after selection of the private sector's most advantageous proposal, and all necessary adjustments have been made to ensure that the Government's in-house cost estimate and the other offers are based upon the same scope of work and performance standards, the contracting officer opens the Government's in-house cost estimate, and completes the CCF.

4. If, after contract start, the cost comparison "winner" is found to be unresponsive or otherwise unable to perform, the Government should seek a reaffirmation of bids received from the in-house, private sector and ISSA, as appropriate, to the cost comparison solicitation. Adjustments, limited to time delays or inflation, should be accommodated for all offerors. The CCF is then recalculated and award made to the next lowest bidder.

#### **K. Appeals of Tentative Waiver and Cost Comparison Decisions**

1. Following a tentative waiver or A-76 cost comparison decision, the A-76 Administrative Appeals process is invoked. To be eligible for review under the A-76 Administrative Appeals process, appeals must:

- a. Be submitted by an eligible appellant.
- b. In the case of a waiver, be received by the official in paragraph 9.a. of the Circular, or designee. In the case of a tentative cost comparison decision, be received by the contracting officer. In either case, the appeal must be received in writing and within 20 calendar days after the date that all supporting documentation is made publicly available. The agency may extend the appeal period to a maximum of 30 days if the cost comparison is particularly complex.
- c. Address specific questions regarding an agency's compliance with the requirements and procedures of this Circular, factual questions regarding agency justifications to waive a cost comparison, or address specific questions regarding the costs entered by the Government on the applicable Cost Comparison Form and set forth the rationale for questioning those items.
- d. Identify specific instances of agency denials of information not otherwise protected by law or regulation.
- e. Demonstrate that the items appealed, individually or in aggregate, would reverse the tentative decision.

2. An eligible appellant is defined as:

a. Federal employees (or their representatives) and existing Federal contractors affected by a tentative decision to waive a cost comparison;

b. Federal employees (or their representatives) and contractors that have submitted formal bids or offers who would be affected by a tentative decision to convert to or from in-house, contract or ISSA performance as a result of a cost comparison; or

c. agencies that have submitted formal offers to compete for the right to provide services through ISSAs.

3. With receipt of an eligible appeal, the official designated in paragraph 9.a. of the Circular, or designee, assigns an official(s) to serve as the A-76 Administrative Appeal Authority for that appeal. The individual(s) selected must be: (a) two levels above the official who signed the waiver, in the case of a cost comparison waiver authorized under Chapter 1, paragraph E, of this Part; or (b) independent of the activity under review or at least two organizational levels above the official who certified the Government's Management Plan and MEO, in the case of a tentative cost comparison appeal.

4. The Appeal Authority ensures that the cost items challenged in the appeal are properly accounted for in accordance with the procedures of Part II of this Supplement. The Authority also ensures that all participants to the cost comparison process have appropriate access to the decision process.

5. If significant problems with the waiver justification or cost comparison estimates are found, such that the tentative decision may be unsupported or is in error, the Appeal Authority corrects the error and cost comparison, if applicable, and the agency proceeds according to the amended decision. The Authority will not review any item not formally challenged by an eligible appellant.

6. Agency A-76 Administrative Appeal procedures do not apply to questions concerning:

- a. the selection of one contract offeror or another for competition with the in-house cost estimate;
- b. award to one contractor in preference to another;
- c. Government management decisions involving the Government's certified in-house MEO, and
- d. the policies or procedures contained in the Circular and this Supplement.

7. The procedure does not authorize an appeal outside the agency or judicial review, nor does it authorize sequential appeals. The appeal process provides reasonable assurances that decisions to waive the cost comparison requirements of this Supplement

are properly reviewed and that the cost comparison requirements of this Supplement are properly adhered to, when applicable. Therefore, all directly affected parties are expected to submit their appeals within the initial appeal period.

8. The appeals procedure should provide for a final decision within 30 days of receipt of the appeal by the Appeal Authority.

#### **L. Post-MEO Performance Review**

1. When services are performed in-house as a result of a cost comparison, including those involving an ISSA, a formal review and inspection of the Most Efficient Organization (MEO) should be conducted. Typically, this review should be conducted following the end of the first full year of performance.

2. The Post-MEO Performance Review confirms that the MEO has been implemented in accordance with the Transition Plan, establishes the MEO's ability to perform the services of the PWS and confirms that actual costs are within the estimates contained in the in-house estimate. Adjustments may be made for formal mission or scope of work changes.

3. Post-MEO Reviews will be conducted at the direction of the official in paragraph 9.a. of the Circular, or designee, but must be independent of the most senior official included in the Government's in-house or ISSA cost estimate. Post-MEO Performance Reviews will be conducted on not less than 20 percent of the functions performed by the Government as a result of a cost comparison.

4. MEO implementation may be measured in terms of the FTE, grade structure and the contract support included in the Transition and Management Plan.

5. MEO performance may be measured in terms of workload, responsiveness and quality of work. Spe-

cial inspections and a review of the activity's implementation of the Quality Assurance Surveillance Plan may be necessary.

6. Cost conformance may be determined by an analysis of actual labor and material costs against the Personnel, Material, and Other Specifically Attributable costs on the final CCF. Care should be taken to assure that adjustments are made for retained or saved pay and for fringe benefit factors when using actual cost records.

7. Minor cost or performance deficiencies may be corrected to maintain the integrity of the cost comparison process. A period of time consistent with that given to a contractor may be given to the in-house or ISSA activity to correct any deficiencies found. Failure to correct deficiencies that would individually or in aggregate invalidate the original cost comparison, or any finding of a significant deviation from the requirements of the PWS, shall result in the following:

As with a contract default, if an in-house or ISSA failure to perform is identified, including failure to implement the MEO as provided by the Transition Plan, the contracting officer will award the work to next lowest offerer who participated in the cost comparison, if feasible. If award to the next lowest offeror is not feasible the contracting officer will immediately resolicit to conduct a revised and updated cost comparison.

8. An annual list of Post-MEO Performance Review certifications will be made available to the public upon request. This list will identify the total number of cost comparisons completed since the issuance of this Revised Supplemental Handbook and the number of Post-MEO Performance Reviews completed.